



## **DEPARTMENT OF THE INTERIOR**

### **Fish and Wildlife Service**

**[FWS–R3–ES–2013–N051]**

**[FXES11130300000-134-FF03E00000]**

### **Notice of Availability of Draft Habitat Conservation Plan; Receipt of Application for Incidental Take Permit; Enbridge Pipelines (Lakehead), L.L.C.**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service, USFWS), have received an application from Enbridge Pipelines (Lakehead) L.L.C. (applicant), for an incidental take permit (ITP) under the Endangered Species Act of 1973 (ESA). If approved, the ITP would authorize incidental take of the federally endangered Hine’s Emerald Dragonfly (hereafter “HED”). The applicant has prepared a low-effect habitat conservation plan (HCP) to cover activities associated with pipeline maintenance work in Garfield Township, Mackinac County, Michigan. We invite comments from the public on the application, which includes the low-effect HCP, which has been determined to be eligible for a Categorical Exclusion under the National Environmental Policy Act of 1969, as amended (NEPA).

**DATES:** To ensure consideration, please send your written comments on or before [INSERT DATE 30 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** Send written comments via U.S. mail to the Field Supervisor, Attn: Barbara Hosler, U.S. Fish and Wildlife Service, 2651 Coolidge Road East, Ste. 101, Lansing, MI 48823. Phone: 517-351-2555. Fax: 517-351-1443. TTY: 1-800-877-8339, or by electronic mail to [Barbara\\_Hosler@fws.gov](mailto:Barbara_Hosler@fws.gov).

**FOR FURTHER INFORMATION CONTACT:** Barb Hosler, (517) 351-6326

**SUPPLEMENTARY INFORMATION:** We have received an application from Enbridge Pipelines (Lakehead) L.L.C., Inc., for an incidental take permit (ITP) under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.; ESA). If approved, the ITP would authorize incidental take of the Hine's Emerald Dragonfly (hereafter "HED"; *Somatochlora hineana*).

Under the ESA, we announce that we have gathered the information necessary to evaluate the application for permit issuance, including the HCP, which provides measures to minimize and mitigate the effects of the proposed incidental take of the HED.

## **Background**

Pipeline maintenance work is planned by Enbridge Pipelines (Lakehead) L.L.C. (Enbridge) in Garfield Township, Mackinac County, Michigan. The purpose of the planned work is to inspect and, if necessary, repair three sections of Enbridge's Line 5 (30-inch diameter) pipeline located in and adjacent to a tributary to O'Niel Creek and associated wetlands. The sections of pipe require excavation in order to complete. The proposed excavation is estimated to be 30 ft wide, 140 ft long, and up to 10 ft deep.

The maintenance of the pipeline at the identified locations is being completed as required by the Department of Transportation (DOT) regulations in the Code of Federal Regulations (CFR) at 49 CFR Part 195.452 on Integrity Management. The proposed work is expected to take approximately 14 to 21 days to complete during winter months in early 2013, and will be initiated after the required permits are obtained. The permits will cover all activities associated with accessing the work site during winter, including excavation, pipeline inspection and repair, dewatering, temporary work area and spoil pile stock, backfilling excavation, and site restoration. The area included is 2.64 acres. The extent of direct impact by the project is 0.97 acres within the HCP boundary.

Surveys have not been conducted for Hine's Emerald Dragonfly at the project site. An Incidental Take Permit is being sought because potential habitat is present and will be impacted by the proposed project. Temporary impacts will result from winter excavation, dewatering, and backfilling, which may destroy overwintering dragonfly larvae. No impacts to adults, or adult foraging and breeding habitat, are anticipated.

Based on population estimates of known populations within Michigan, the number of larvae within the 4,200 ft<sup>2</sup> (390 m<sup>2</sup>) excavation footprint could be within the range of 156 – 328 larvae. Assuming the worst-case impact using highest larval densities reported for Michigan, direct impact could be mortality of 328 larvae from winter-time excavation. The impact area of the excavation represents approximately 3.5 percent of the potential habitat at this site. If number of larvae in the habitat is proportional to the habitat area, the density estimate of 0.84 larvae/m<sup>2</sup> yields an overall population estimate of over 9,300 larvae. The maximum estimated impact of 328 larvae represents 3.5 percent of this total.

Upon completion of the work, the site will be restored and mulched. The stream bank will be reinforced with a biolog consisting of coconut fibers that have been compressed and stuffed into a netting. Biolog anchorage shall be in accordance with the manufacturer's recommendations. The excavation will be mulched with weed-free mulch or an erosion control mat. The excavation area will be revegetated after soil thaw (May 1-June 1) with a wet meadow seed mixture comprised of regionally appropriate native species. Seeding will be done by hand or with a hand-held seeder.

Compensatory mitigation will consist of a one-time payment of \$12,000 to the National Fish and Wildlife Foundation (NFWF). The payment will be made at the time the incidental take permit is issued and will be earmarked for conservation programs to benefit Hine's emerald dragonfly.

Monitoring will be conducted during and after pipeline maintenance to document the extent of actual excavation and site restoration. No surveys are proposed for adult or larval dragonflies.

### **Proposed Action**

Section 9 of the ESA prohibits the "taking" of threatened and endangered species. However, provided certain criteria are met, we are authorized to issue permits under section 10(a)(1)(B) of the ESA for take of federally listed species, when, among other things, such a taking is incidental to, and not the purpose of, otherwise lawful activities. Under the ESA, the term "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect endangered and threatened species, or to attempt to engage in any such conduct. Our implementing regulations define "harm" as significant habitat

modification or degradation that results in death or injury to listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering (50 CFR 17.3). Harass, as defined, means “an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering” (50 CFR 17.3). However, under specified circumstances, the Service may issue permits that allow the take of federally listed species, provided that the take that occurs is incidental to, but not the purpose of, an otherwise lawful activity.

Regulations governing permits for endangered and threatened species are at 50 CFR 17.22 and 17.32, respectively. Section 10(a)(1)(B) of the Act contains provisions for issuing such incidental take permits to non-Federal entities for the take of endangered and threatened species, provided the following criteria are met: (1) The taking will be incidental; (2) The applicant will, to the maximum extent practicable, minimize and mitigate the impact of such taking; (3) The applicant will develop a proposed HCP and ensure that adequate funding for the HCP will be provided; (4) The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and (5) The applicant will carry out any other measures that the Service may require as being necessary or appropriate for the purposes of the HCP.

The applicant seeks an incidental take permit for proposed covered activities within a 2.64-acre permit area. The draft HCP analyzes take attributable to the applicant’s proposed activities. If issued, the ITP would authorize potential incidental take of HED consistent with the applicant’s HCP. To issue the permit, the Service must

find that the application, including its HCP, satisfies the criteria of section 10(a)(1)(B) of the ESA and the Service's implementing regulations at 50 CFR Part 13, 17.22, and 17.32.

### **Reviewing Documents and Submitting Comments**

Please refer to the Enbridge HCP when submitting comments. The permit application and supporting documents (ITP application, HCP, EAS) may be obtained on the Internet at the following address:

*<http://www.fws.gov/midwest/endangered/permits/hcp/r3hcps.html>*

Persons without access to the Internet may obtain copies of the draft HCP and associated documents by contacting the Service office described under ADDRESSES, above. The draft document will also be available for public inspection, by appointment, during normal business hours (8 a.m. to 4 p.m.) at the office described under ADDRESSES above.

Written comments will be accepted as described under ADDRESSES, above.

### **Public Availability of Comments**

Written comments we receive become part of the public record associated with this action. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that the entire comment, including your personal identifying information, may be made available at any time.

While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

### **Authority**

We provide this notice under section 10(c) of the ESA (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR 17.22), and NEPA (42 U.S.C. 4371 *et seq.*) and its implementing regulations (40 CFR 1506.6; 43 CFR Part 46).

Dated: March 4, 2013.

Lynn Lewis,  
Assistant Regional Director,  
Ecological Services,  
Midwest Region.

[FR Doc. 2013-05524 Filed 03/08/2013 at 8:45 am; Publication Date: 03/11/2013]